In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 1009

RONALD W. KEISER, PETITIONER

v.

RICHARD HARTMAN, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

MEMORANDUM FOR RESPONDENTS IN OPPOSITION

Petitioner, a former County Supervisor of the Farmers' Home Administration, instituted this suit against seven fellow employees of the Department of Agriculture, seeking to recover general and punitive damages for alleged libel, slander, malicious interference with contractual relations, malicious prosecution and false imprisonment. Petitioner alleged that the respondents, alone and in conspiracy with each other, published falsehoods about petitioner for the purpose of effecting his discharge from the federal service. The only particularized allegations charge that six of the respondents (Richard P. Hartman, Rocco F. Denice, Stephen J. Worn, Jr., F. Rene Gos-

774-624—65

siaux, Chester J. Tyson, Jr., and Agnes C. Sullivan) maliciously reported instances of improper conduct by petitioner and an office clerk, during official office hours or at official functions, in the course of a Department of Agriculture investigation into petitioner's fitness for continued employment.[1]

The investigation in the course of which these reports were made was initiated after the Department had received several complaints about petitioner's conduct and his management of the county office. As a result of the investigation, petitioner was charged with having engaged in conduct prejudicial to the best interest of the service and on June 27, 1962, he was removed from his position as County Supervisor. On appeal to the Civil Service Commission, the removal action was affirmed. Petitioner's suit challenging the lawfulness of his dismissal is now pending in the district court.[2]

In the present suit, petitioner has conceded "that the defendants' acts were within the outer perimeter of their line of duty as Federal employees" and thus that the case is controlled by *Barr* v. *Matteo*, 360 U.S. 564. (Pet. App. 3a.) The district court gave judgment on the pleadings for defendants on the basis of petitioner's concession (Pet. App. 1a) and the court of appeals affirmed *per curiam* (Pet. App. 2a–3a).

In this Court petitioner urges that *Barr* v. *Matteo*

[1] The suit against the Department of Agriculture investigator, the remaining respondent, was dismissed for failure to effect service.

[2] *Keiser* v. *Freeman* (Civ. No. 1184–64, D.C.D.C.). If, as petitioner suggests (Pet. 3–4), this dismissal was unlawful, he may obtain both financial recompense and reinstatement.

and its companion case, *Howard* v. *Lyons,* 360 U.S. 593, be overruled.

We submit there is no occasion to re-examine those recent precedents. The present record affords an even stronger basis for affording immunity than did those cases. The acts charged with particularity here all occurred in the course of an internal governmental investigation of petitioner's fitness. Thus there is no question in this case, as there was in *Barr* v. *Matteo* and *Howard* v. *Lyons,* whether defendants' acts were wholly within the scope of their official duties. Nor is this case concerned, as were *Barr* and *Howard,* with defamatory statements shown to have been published outside the government agency involved.

On any view, the statements alleged to be defamatory in the present case were privileged as directly pertinent to an internal governmental fitness investigation.

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

ARCHIBALD COX,
Solicitor General.

MAY 1965.

U.S. GOVERNMENT PRINTING OFFICE: 1965